

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CA 05-1006

BOBBY HILL

February 7, 2007

APPELLANT

V.

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F312538]

WATKINS MOTOR LINES LIBERTY
INSURANCE CORPORATION

APPELLEES

REVERSED

Appellant Bobby Hill submitted a claim for workers' compensation benefits due to an injury he allegedly suffered when he fell from the back of a delivery truck while working for appellee as a local pick-up and delivery driver. An administrative law judge (ALJ) found that Hill had proven he sustained a compensable injury and that he was entitled to receive temporary total disability benefits, reimbursement for related hospital and medical expenses, and continuing reasonably necessary medical treatment in connection with the compensable injury.

The Arkansas Workers' Compensation Commission reversed the ALJ's decision based on its finding that Hill did not prove by a preponderance of the evidence that he sustained a compensable injury. The Commission concluded that there was "no corroborating evidence of an injury" and that there were no "objective medical findings

showing a compensable injury on September 24, 2002.” This timely *pro se* appeal followed. Appellant asserts that there was corroborating evidence of his injury and that the Commission disregarded the evidence in support of his claim. We agree and reverse.

Appellant is employed by appellee Watkins Motor Lines as a local pick-up and delivery truck driver. According to appellant, on September 24, 2002, while making a delivery to Candy Bouquet International, a pallet containing candy broke in half as it was being lifted from the back of his truck by a forklift. As appellant tried to hold onto the broken pallet, he fell from his truck, landing on his hands and knees on the concrete floor of the warehouse. It is undisputed that appellant reported the incident to Linda Cope, a supervisory employee for appellee, when he returned to the company at the end of his route. Because appellant believed that he was merely bruised, he declined medical attention. Ms. Cope failed to fill out an accident report.

At the hearing appellant’s immediate supervisor, Pat Blakely, was called as a corroborating witness. Blakely testified that the next day, he was in the dispatch office when he saw Hill limping on the dock. He called Hill into the office and asked him what was wrong. Hill told him that he fell at Candy Bouquet and hurt his wrist and leg. Blakely asked Hill if he had reported the incident, and Hill replied that he had. He then asked Hill if he had gone to the doctor, and Hill told him that he had not. Blakely testified that he encouraged Hill to go to the doctor, but that Hill is “a big old boy and he’s just a tough guy,” and Hill said he would be all right.

Sometime after the incident, Blakely noticed that Hill was wearing a splint on his

wrist. Further, when Hill began wearing shorts during the following summer months, Blakely testified that he saw a big knot on Hill's knee. When he asked Hill about it, Hill told him that the knot was from when he fell from his truck at Candy Bouquet. Blakely testified that prior to Hill's fall, he and Hill played softball together and Hill did not appear to have any physical problems.

Hill testified that although his wrist hurt with a low, dull pain, he took over-the-counter medication instead of seeking medical attention. He believed that if his wrist was broken, he would not be able to move his fingers. Because he was able to move his hand and fingers, he assumed that his wrist would eventually improve. When the knot on his knee began to get bigger, Hill decided to see his family physician. He testified that he did not initially submit a workers' compensation claim because he did not want Linda Cope to get in trouble for her failure to fill out an accident report.

Hill saw Dr. Kevin Heigel on April 18, 2003. Although he was primarily concerned about the knot and pain in his knee, he also reported to Dr. Heigel that his right wrist hurt. According to the medical record, Dr. Heigel noticed a decreased range of motion in Hill's right wrist, and he believed a ganglion cyst and arthritis could be the cause. According to Hill, Dr. Heigel told him that if his symptoms did not improve, he should see an orthopedic specialist.

Hill said that in August, while he was at the lake, his left knee gave way causing him to fall. He caught himself with his right hand. Because his knee was still problematic, he decided to visit an orthopedic specialist as Dr. Heigel had advised. Hill met with Dr. Stephen

Hudson on August 13, 2003. Dr. Hudson's report of that day reflects that Hill complained that he had experienced wrist pain prior to his recent fall. It also notes that Hill disclosed that he was in a motorcycle accident when he was fourteen years old that resulted in surgery to both knees. Dr. Hudson scheduled an MRI for Hill so that he could determine whether the wrist injury was new or chronic. The MRI was performed on August 15, 2003, and it showed that Hill had a "fracture of the lunate, probably old, with subsequent lunate avascular necrosis."

Hill suffered a second fall in October 2003 while helping his mother move. He testified that again, his knee gave way, and he fell and hit his head. Hill testified that he was wearing his wrist splint at the time. Hill informed Dr. Hudson of his fall and the fall was noted in a follow-up report dated October 30, 2003. Hill was treated with a splint but continued to have pain in his wrist.

A report dated December 22, 2003, from a follow-up visit to Dr. Hudson, notes that the x-ray taken on August 13, 2003, showed a chronic fracture of his lunate. The report further notes that Hill "has had two separate falls after this *which have aggravated the symptoms.*" (Emphasis added.) Hill underwent surgery on December 24, 2003, at which time he had a portion of his wrist bone removed. He returned to work on April 15, 2004, and has worked for appellee since then.

A letter from Dr. Hudson dated June 28, 2004, explains that avascular necrosis is a loss of blood supply to the bone that can happen after a fracture. The letter also explains that this condition usually takes from three to six months to begin developing. Although unable

to pinpoint the exact date of injury from the medical evidence, Dr. Hudson expressed “with reasonable certainty that it was not a new or acute fracture, but was more of a chronic injury.”

Hill testified that once he was informed that surgery was required, he was convinced by his new supervisor, Jennifer, that he should file for workers’ compensation. He said that he did not want workers’ compensation, because he knew Linda did not complete an accident report and he did not want her to be in trouble; however Jennifer “talked him into it.” Jennifer filled out the paperwork and submitted it on Hill’s behalf. Subsequently, Hill received a call from a claims adjuster, and she interviewed him on the phone. After this interview, the employer’s insurance carrier contested the claim in its entirety.

When reviewing a decision of the Workers’ Compensation Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission, and affirms that decision if it is supported by substantial evidence. *Searcy Indus. Laundry v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission’s opinion displays a substantial basis for the denial of relief. *Clardy v. Medi-Homes LTC Serv. LLC*, 75 Ark. App. 156, 55 S.W.3d 791 (2001). Appellate courts defer to the Commission on issues involving the weight of evidence and the credibility of witnesses. *Freeman v. Con-*

Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). However, while the Commission may be insulated to a certain degree, it is not so insulated to render appellate review meaningless. *Id.* The Commission may not arbitrarily disregard evidence in support of a claim. *Id.*

In denying appellant's claim, the Commission erroneously concluded that "there was no corroborating evidence of an injury." The delivery receipt for Candy Bouquet corroborates that appellant made a delivery to that store on September 24, 2002. Nonetheless, the Commission points to the fact that there is no "independent documentation or probative report of an injury on that date." The first error in this finding is that a claimant is not required to present independent documentation or probative report of an injury on a certain date in order to prove his injury was identifiable by time and place.

The second error is that the Commission found that there was *no* evidence to corroborate that appellant suffered a job-related injury on December 22, 2004. To the contrary, the parties stipulated that appellant informed one of his supervisors, Linda Cope, that he fell from his truck and injured himself while making a delivery to Candy Bouquet – a delivery that was undisputedly made on September 24, 2002.

The existence of appellant's injury was also corroborated by testimony from another supervisory employee, Pat Blakely. Blakely testified that Hill told him about his accident, that he witnessed Hill limping around on the dock, that he saw Hill wearing a wrist splint, and that he saw the knot on Hill's knee. There was further corroborating testimony from Hill's son, and the narratives in several medical reports reflect that Hill reported having

trouble with his wrist for some time.

In light of this testimony, we must conclude that, in finding there was no corroborating evidence of an injury, the Commission arbitrarily disregarded evidence in support of Hill's claim.¹

The Commission also found that appellant's claim lacked "any objective medical findings showing a compensable injury on September 24, 2002," meaning that appellant failed to establish a causal connection between his injury and his need for treatment. The Commission relies on the fact that Dr. Hudson could not opine within a reasonable degree of medical certainty the date of the fracture or whether it was caused by the September 24, 2002 injury.

The Commission's third error was in requiring appellant to present objective medical evidence to establish a causal connection between his injury and his work-related accident. In order to prove a compensable injury a claimant must prove, among other things, a causal relationship between the injury and the employment. *McMillan v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). Objective medical evidence is *not* essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relation to a work-related incident. *Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). Thus, appellant was

¹The Commission seems to call into question appellant's credibility. However, the Commission based its findings on the erroneous conclusion that appellant failed to provide corroborative evidence of his injury.

required to prove the *existence and extent of his injury* by medical findings, but was *not* required to prove the *date* of his injury or the *causal relationship* by objective medical findings.

Here, the extent and existence of the injury was proven by the August 15, 2003 MRI that showed a chronic fracture of appellant's wrist. The causal relationship was proven by a preponderance of the corroborating nonmedical evidence, as previously noted. It is true that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B) (Supp. 2005). It is also true that Dr. Hudson could not opine within a reasonable degree of medical certainty the date of the fracture or the causal relationship between the fracture and appellant's accident. But that is of no moment because, pursuant to *Van Wagner, supra*, appellant was not required to prove the causal connection between his work-related injury and his need for treatment by objective medical evidence. In any event, Dr. Hudson ultimately concluded that the type of condition that appellant suffered usually takes from three to six months to begin developing and stated "with *reasonable certainty* that it was not a new or acute fracture, but was more of a chronic injury."

On these facts, we hold that the Commission arbitrarily disregarded evidence in support of appellant's claim. We reverse because the Commission did not have a substantial basis to deny relief.

Reversed.

GLOVER and VAUGHT, JJ., agree.

